Goo Thian Chuan v Public Prosecutor

HIGH COURT (BRUNEI DARUSSALAM) — CRIMINAL APPEAL NO 25 OF 2010
KIFRAWI CHIEF JUSTICE
8 SEPTEMBER 2010

Customs and Excise — Possession — Dutiable liquor — Appeal by appellant against sentences for possession and conveyance of liquor on which excise duty not paid — First offender — Guilty plea — Whether sentence excessive

The appellant was convicted and sentenced after he pleaded guilty in the magistrate's court to three charges of contravening the Excise Order 2006 ('the order'). The first charge was that he breached the conditions and restrictions of a permit issued to him under the order, allowing him to possess certain liquor for his personal consumption only, by giving away 12 cans of 330ml beer to two persons. Under the second charge, he knowingly had in his possession 133 cans of 330ml beer on which duty had not been paid while under the third charge he knowingly conveyed 96 cans of 330ml beer on which duty had not been paid. The first two charges were committed at his home in Kampung Subok while the third charge was committed at a basement car park at a hotel in Berakas. The senior magistrate sentenced the appellant to $1,000 in default two months jail on the first charge and $2,500 in default five months jail on each of the second and third charges after taking into account his guilty plea and the fact he was a first offender. According to the facts of the case, customs preventive branch personnel acting on information about the illegal sale of intoxicating liquor, conducted surveillance on the appellant's house on the material day and time. They noticed the appellant come out of the house and hand a plastic bag to a female passenger in a vehicle that had arrived at the house. The customs officers stopped and searched the vehicle shortly after it left and seized 12 cans of 330ml beer from the back passenger right foot rest. The driver of the vehicle told the officers he had bought the beer for $25 from Kampung Subok. The customs officers then raided the appellant's house where they seized 133 cans of 330ml beer and two 1-litre bottles of vodka. Two months after this incident, customs preventive branch officers detained the appellant while he was unloading goods from a car at the basement car park of a hotel in Berakas at the entrance leading up to the hotel's first floor. The officers seized 96 cans of 330ml beer from the vehicle. The value of the liquor under the second charge was $110. Unpaid duty on the liquor was $132. The value of the liquor under the third charge was $77 and duty not paid on the

liquor was $96. The appellant appealed for a reduction of his sentences as he was a first offender.

Held, allowing the appeal:

(1) The total sentence of $6,000 fine in default 12 months jail imposed below was excessive taking into consideration the appellant was a first offender and that he had pleaded guilty to the charges (see para 7).

(2) It was proper that the sentences for each charge run consecutively because the offences were separate (see para 7).

[Bahasa Malaysia summary

Perayu disabitkan dan dihukum selepas dia mengaku bersalah di mahkamah majistret terhadap tiga tuduhan menyalahi Perintah Eksais 2006 ('perintah tersebut'). Tuduhan pertama adalah bahawa dia memungkiri syarat-syarat dan sekatan-sekatan permit yang dikeluarkan kepadanya di bawah perintah tersebut, membenarkan dia memiliki minuman keras tertentu hanya untuk pengunaan dirinya sendiri, dengan memberi 12 tin 330ml bir kepada dua orang. Di bawah tuduhan kedua, dia dengan mengetahui dalam milikannya 133 tin 330ml bir duti yang mana belum dibayar sementara di bawah tuduhan ketiga dia dengan mengetahui membawa 96 tin 330ml bir duti yang mana belum dibayar. Kedua-dua tuduhan yang pertama dilakukan di rumahnya di Kampung Subok sementara tiga tuduhan dilakukan di tempat letak kereta bawah tanah di sebuah hotel di Berakas. Majistret kanan menghukum perayu kepada $1,000 jika ingkar penjara dua bulan di atas tuduhan pertama dan $2,500 jika ingkar penjara lima bulan atas setiap tuduhan-tuduhan kedua dan ketiga selepas mengambil kira plid bersalahnya dan fakta bahawa dia adalah pesalah kali pertama. Mengikut fakta kes, pegawai kastam cawangan pencegahan bertindak atas maklumat mengenai jualan haram minuman keras yang memabukkan, menjalankan pengawasan ke atas rumah perayu pada hari dan masa material. Mereka nampak perayu keluar daripada rumah dan memberikan beg plastik kepada penumpang perempuan di dalam kenderaan yang tiba di rumah tersebut. Pegawai-pegawai kastam menahan dan mengeledah kenderaan sebaik sahaja ia berlalu dan merampas 12 tin 330ml bir daripada sebelah kanan letak kaki penumpang belakang. Pemandu kenderaan memberitahu pegawai-pegawai yang dia membeli bir berharga $25 di Kampung Subok. Pegawai-pegawai kastam kemudiannya mengeledah rumah perayu di mana mereka merampas 133 tin 330ml bir dan dua botol 1 liter vodka. Dua bulan selepas kejadian ini, pegawai kastam cawangan pencegahan menahan perayu semasa dia memunggah barang-barang daripada kereta di tempat letak kereta bawah tanah hotel di Berakas di pintu depan yang terus naik ke tingkat pertama hotel. Pegawai-pegawai merampas 96 tin 330ml bir daripada kenderaan. Nilai minuman keras di bawah tuduhan kedua adalah $110. Duti yang belum dibayar atas minuman keras tersebut adalah $132. Nilai minuman keras di bawah tuduhan ketiga adalah $77 dan duti tidak

A dibayar atas minuman keras adalah $96. Perayu merayu untuk pengurangan hukumannnya memandangkan dia adalah pesalah kali pertama.

Diputuskan,membenarkan rayuan:

B (1) Hukuman keseluruhan denda $6,000 jika ingkar penjara 12 bulan yang dikenakan adalah berlebihan mengambilkira pertimbangan bahawa perayu adalah pesalah kali pertama dan bahawa dia telah memplid bersalah kepada tuduhan-tuduhan (lihat perenggan 7).

(2) Ia adalah betul bahawa hukuman untuk setiap tuduhan berjalan serentak C kerana kesalahan-kesalahan adalah berasingan (lihat perenggan 7).]

Notes

For cases on dutiable liquor, see 6 *Mallal's Digest* (4th Ed, 2010 Reissue), paras 165–166.

D *Appellant in person.*
Esnawi bin Sharbawi (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

Kifrawi CJ:

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[1] The defendant was charged as follows:

First Charge

F That you on the 19th day of February 2010 at about 2129 hours at house No.6, Simpang No.242, Kampong Subok in Brunei Darussalam, did breach of the conditions and restrictions upon which a permit is issued to you under the Excise Order, 2006, that the liquor are for personal consumption only, to wit, by giving away the 12 cans of Tiger Beer at 330 ml to Nicholas Lim Khai Wei and Penny Lim G Ming Chu, and that you have thereby committed an offence punishable under section 154 of the Excise Order, 2006 and punishable under section 154 of the same Order.

Second Charge

H That you on the 19th day of February 2010 at about 2207 hours at house No.6, Simpang No. 242, Kampong Subok in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit, alcoholic liquor in the form of 133 cans of Tiger Beer at 330 ml, and you have thereby committed an offence under section 146(l)(d) of the Excise Order, 2006 and punishable under section 146(l)(i) of the same Order.

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Third Charge

That you on the 19th day of April 2010 at about 1720 hours inside a vehicle bearing registration number BR6750 (Toyota Corolla) at basement car park Orchid Garden Hotel, Berakas in Brunei Darussalam, did knowingly conveying unexcisable goods,

to wit, alcoholic liquor in the form of 96 cans of Tiger Beer at 330 ml, and you have thereby committed an offence under section 146(l)(e) of the Excise Order, 2006 and punishable under section 146(l)(i) of the same Order.

[2] He pleaded guilty to all the charges and admitted the following brief facts:

The Defendant is a 49 years old Bruneian citizen and currently resides at No.6, Simpang 242, Kampong Subok, Brunei Darussalam. He is self employed and gets B$300.00.

FIRST AND SECOND CHANGE

On the 19 February 2010 at about 1900 hours, acting information received a group of customs preventive personnel conducted a surveillance on the target residence on No 6, Simpang 424, Kampong Subok in Brunei Darussalam in relation to illegal selling of intoxicating liquor.

At about 2129 hours, an eyeball saw a vehicle bearing registration No KK4284 arriving into the target area and the officers saw a male wearing brown shirt coming out of the target residence holding a black plastic bag believed to contain alcoholic liquors. A female passenger wearing black shirt took the black plastic bag from the said man.

At about 2132 hours, the said vehicle drove away from the place and headed towards Kampong Perpindahan Lambak Kanan where the customs officers stopped the vehicle at house No 17, Jalan 11, Simpang 107, Kg Perpindahan Lambak Kanan.

The officers then made an inspection to the said vehicle and found 12 cans of Tiger Beer at 330ml kept at the back passenger right foot rest. The officers then asked the driver Nicholas Lim and he told the officers that he bought the said liquor for B$25 from Kampong Subok. Both the driver and a female passenger named Penny Lim Ming Chu together with the goods were detained and brought to the Royal Customs and Excise Department for further investigations.

Following the occurrence, a raid was made to the seller's resident at No 6, Simpang 242, Kampong Subok, Brunei Darussalam, and the search was witnessed by Mr Goo Thian Chuan, the defendant.

Description	**Remarks**
1. 24 cans of Tiger Beer at 330 ml	Found inside a refrigerator at guest room
2. 24 cans of Tiger Beer at 330 ml	Found near a refrigerator at guest room
3. 1 bottle of Smirnoff vodka at 1 litre and 1 bottle of Smirnoff vodka at 1 liter opened	Found on a table at guest room
4. 1 can of Tiger Beer at 330 ml	Found near a veranda
5. 84 cans of Tiger Beer at 330 ml	Found under a staircase

All of the items were detained for as exhibits.

Upon investigations, the defendant admitted that all the seized goods found inside the said house belonged to the defendant.

The defendant further admitted that the goods were meant to be used for celebrating the Chinese New Year.

The defendant also admitted that he gave 12 cans of Tiger Beer to a Chinese woman in the Honda Odyssey KK4284 together with three pieces of orange.

The prosecution is applying for the items listed in the notice of seizure attached herewith to be forfeited to the state.

THIRD CHARGE

On the 19 April 2010 at about 1715 hours the customs prevention officers saw a man acting suspiciously at the basement car park of Orchid Garden Hotel.

At about 1720 hours, a target vehicle bearing registration No BR6750 (Toyota Corolla) stopped at an entrance heading to 1st floor and then the officers saw the said man approached the said vehicle. Later the driver of the said vehicle stepped out and began to unload the goods from the bonnet believed to be liquors.

The officers then ran to the said vehicle and detained the driver known as Goo Thian Chuan, the defendant.

The officers then made a thorough inspection and found a total of 96 cans of tiger beer at 330ml kept at the rear bonnet of the said vehicle.

The defendant together with the goods were detained where a notice of seizure was duly issued for the seized goods.

Upon investigations, the defendant admitted that all the seized goods belonged to him. The defendant also admitted that the goods were to be brought into one of the room at the hotel to celebrate defendant's friend birthday party. The vehicle belonged to his brother-in-law.

The value of the liquor for the second charge is $110, whilst the excise duty to be paid amounted to B$132. And the value of the liquor of the third charge is $77 whilst the excise duty to be paid amounted to $96.

The prosecution is applying for the items listed in the notice of seizure attached herewith to be forfeited to the state.

On record the defendant is a first offender.

[3] He was sentenced as follows:

First charge: $1,000 in default two months imprisonment.

Second charge: $2,500 in default five months imprisonment.

Third charge: $2,500 in default five months imprisonment.

Total: $6,000 in default 12 months imprisonment.

All forfeited items forfeited to the state and to be disposed of.

[4] The Senior magistrate took into consideration the mitigating factors namely the guilty plea and the fact he was a first offender.

[5] I note that as regards the first charge, s 154 of the Excise Order 2006 provides that the offender guilty of an offence under s 154 shall be liable to a fine, not exceeding $16,000, imprisonment for a term not exceeding eight months or both. As regards the second charge and the third charge, the penalty is a fine not less than 6 times the amount of the excise duty of the relevant unexisable goods or $40,000, whichever is the lesser amount, and of not more than 20 times the amount of excise duty or $40,000 whichever is the greater amount, as provided by s 146(1)(i). I have also noted the provision under s 132 of the Excise Order 2006 relating to the court's power in imposing imprisonment in default of fine.

[6] The appellant pleaded to this court for the total sentences to be reduced because he was a first offender. Deputy public prosecutor Esnawi, however, submitted the sentences were appropriate. The sentences should run consecutively because the offences were different offences. The third offence was committed on a different date.

[7] In this case, I agree that it is proper the sentences for each charge to run consecutively because the offences are separate offences. However, I find the total sentences of fine $6,000 in default 12 months' imprisonment to be excessive taking into consideration that he is a first offender and that he pleaded guilty to the charges. I therefore impose the following sentences:

First charge- $1,000 in default one month imprisonment.

Second charge- $2,500 in default three months' imprisonment.

Third charge- $2,500 in default three months' imprisonment.

Total: $6,000 in default seven months' imprisonment.

[8] The sentences passed by the senior magistrate are to be varied accordingly.

Appeal allowed, default jail term on first charge reduced to one month and on second and third charges to three months each.

Reported by Ashok Kumar